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| EXAMINER | | | | |
| NGUYEN, HIEP VAN | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@mcgarrybair.com

Office Action Summary

Application No.

10/711,030

Applicant(s)

BOSSEN ET AL.

Examiner

HIEP NGUYEN

Art Unit

3686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/18/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-20 have been examined.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Claims 1 is directed to a method for improving ergonomics for an individual.

Claim 1 recites "assessing comfort level, applying one indicium..., recording the... coreect fitting.." However, this is merely software, and it has been held that software without a required computer-readable medium-storing software that, when executed, causes the computer to perform a particular process or method (MPEP 2106.01) is merely nonfunctional descriptive material and non-statutory under 35 U.S.C. 101.

Claims 2-13 are rejected as each depends from Claim 1.

5. Claim 14 is directed to a system for improving the ergonomics. Claim 14 recites a survey of input data..., an adjustment, and a determination... Therefore, as the claim is not sufficiently tied to an apparatus, such as a computer, and/or do not transform the underlying subject matter (i.e. an adjustment, survey, determination) to a different state

the claimed method is non-statutory and therefore rejected under 35 U.S.C. 101.

(*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876))

Claim 15-17 are rejected as each depends from Claim 14.

6. Claim 18 is directed to a method for improving ergonomics for a student in a school. Claim 1 recites "requesting data associated with student..., determining and communicating the at least one preferred setting..." However, this is merely software, and it has been held that software without a required computer-readable medium storing software that, when executed, causes the computer to perform a particular process or method (MPEP 2106.01) is merely nonfunctional descriptive material and non-statutory under 35 U.S.C. 101.

7. Claims 19-20 are rejected as each depends from Claim 18.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-6, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US. 6,931,387) in view of Gordon (US PGPub. 20020095417).

10. With respect to Claim 1, Wong et al. teaches a method for improving ergonomics for an individual in a workplace, the workplace comprising at least one item having at least one physically adjustable parameter ('387; col./line 6/57-7/15), the method comprising the steps of: assessing a comfort level of an individual ('387; Col. 8, lines 3-22: the Examiner interprets the selection of a suitable range of motion conducted by various body to make a comfort level of an individual); Wong et al. does not disclose applying at least one indicium to the at least one item for visually indicating a fit setting for the at least one physically adjustable parameter; adjusting the at least one physically adjustable parameter of the at least one item to determine at least one ergonomically correct fit setting that optimizes the comfort level of the individual; and recording the ergonomically correct fit setting indicated by the at least one coding indicium.

Gordon discloses applying at least one indicium to the at least one item for visually indicating a fit setting for the at least one physically adjustable parameter; adjusting the at least one physically adjustable parameter of the at least one item to determine at least one ergonomically correct fit setting that optimizes the comfort level

of the individual; and recording the ergonomically correct fit setting indicated by the at least one coding indicium ('417; Paras 0043, 0045).

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to include in the ergonomic assessment system of Wong et al. the work practices of the task performance ('417; Para 0045) as taught by Gordon and the combination would have yielded predictable results.

11. With respect to Claim 2, the combined art teaches the method according to claim 1 and Wong et al. discloses further comprising the step of auditing the individual to determine whether the at least one physically adjustable parameter complies with the at least one ergonomically correct fit setting ('387; Col./line 6/57-7/15).

12. With respect to Claim 3, the combined art teaches he method according to claim 1, Wong et al. discloses further comprising the step of monitoring the individual to determine whether the individual is a high risk individual ('387; Col./line 2/63-3/5.)

13. With respect to Claim 4, the combined art teaches the method according to claim 1, Wong et al. discloses wherein the comfort level is determined by at least one of presence of discomfort, location of discomfort, intensity of discomfort, and frequency of discomfort (387; Col. 8, lines 16-22; Col. 9, lines 5-10).

14. With respect to Claim 5, the combined art teaches the method according to claim 1 and Wong et al. discloses further comprising the step of providing to the individual a record of the at least one ergonomically correct fit setting and instructions for adjusting the at least one physically adjustable parameter to achieve the at least one ergonomically correct fit setting ('387; col. 9-21; Figs 4 and 7).

15. With respect to Claim 6, the combined art teaches the method according to claim 1, Wong et al. discloses wherein the workplace is a traditional office workplace ('387; Col. 7, lines 2-8).

16. With respect to Claim 14, Wong et al. teaches a system for improving the ergonomics for an individual in a workplace, the workplace comprising at least one item having at least one physically adjustable parameter ('387; col./line 6/57-7/15), the system comprising: a survey of input data ('387; col. 10, lines 47-63) comprising at least one of: (1) physical characteristics of the individual ('387; col./line 6/57-7/15) , (2) characteristics of at least one task performed by the individual ('387; See Figs. 4 and 7), and (3) characteristics of at least one environmental feature of the workplace, wherein the survey is conducted through the Internet ('387; Col. 5, lines 19-47).

Wong et al. does not disclose a determination of at least one preferred setting for the at least one physically adjustable parameter of the at least one item in the workplace based at least in part upon the input data collected in the survey; and an adjustment of the at least one physically adjustable parameter of the at least one item to the preferred setting based upon the results of the determination.

Gordon discloses a determination of at least one preferred setting for the at least one physically adjustable parameter of the at least one item in the workplace based at least in part upon the input data collected in the survey; and an adjustment of the at least one physically adjustable parameter of the at least one item to the preferred setting based upon the results of the determination ('417; Paras 0043, 0045)..

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to include in the ergonomic assessment system of Wong et al. the work practices of the task performance ('417; Para 0045) as taught by Gordon and the combination would have yielded predictable results.

17. With respect to Claim 15, the combined art teaches the system according to claim 14, Wong et al. discloses wherein the determination further comprises a recommendation of a new or replacement item for the at least one item in the workplace ('387; Col. 11, lines. 32-55: product recommendation).

18. With respect to Claim 16, the combined art does not disclose, according to claim 14, wherein the workplace is a school. However, the recitation "the workplace is a school" is intended use and is not given weight.

19. With respect to Claim 17, the combined art teaches the system according to claim 16 and further comprises at least one indicium on the at least one item for indicating a setting of the at least one physically adjustable parameter ('387; See Figs. 4 and 7).

20. Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US. 6,931,387) in view of Gordon (US PGPub. 20020095417) and further in view of Mantovani et al. (US 5,918,693).

21. With respect to Claim 7, the combined art does not disclose, according to claim 1, wherein the workplace is a vehicle.

Mantovani et al. discloses wherein the workplace is a vehicle and wherein the workplace is a tractor cabin of a tractor trailer ('693; Abstract).

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to Combine in the ergonomic assessment system and physical adjustable parameter of Wong et al./ Gordon and the industrial truck's adjustment of height requirement as taught by Mantovani.

22. With respect to Claims 8, 9, 10, 11, 12 and 13 the combined art does not disclose, wherein the workplace is a tractor cabin, wherein the at least one item comprises a steering column assembly, wherein the at least one physically adjustable parameter comprises at least one of a steering column depth and a steering column tilt, wherein the at least one physically adjustable parameter comprises at least one of the following: a seat assembly height, a seat back tilt, a seat rearward tilt, a seat forward tilt, a seat size, a seat assembly depth, and a seat back support levels, and wherein the seat assembly further comprises an armrest, and the at least one physically adjustable parameter comprises at least one of an armrest tilt and an armrest height.

However, the recitation of back seat, steering columns, armrest merely express intended use and are not given weight.

23. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US. 6,931,387) in view of Dencker (US 6,039,392).

24. With respect to Claim 18, Wong et al. teaches a method for improving the ergonomics comprising at least one item having at least one physically adjustable parameter ('387; col./line 6/57-7/15) , the method comprising the steps of: requesting data associated with the student through a survey on the Internet ('387; Col. 5, lines 19-47);

Wong et al. does not disclose said survey for student in a school, nor determining at least one preferred setting for the at least one physically adjustable parameter of the at least one item in the school based at least in part upon the data collected in the survey; and communicating the at least one preferred setting to at least one individual at the school for adjusting the at least one physically adjustable parameter of the at least one item to the preferred setting based upon the results of the determination.

Dencker discloses determining at least one preferred setting for the at least one physically adjustable parameter of the at least one item in the school based at least in part upon the data collected in the survey; and communicating the at least one preferred setting to at least one individual at the school for adjusting the at least one physically adjustable parameter of the at least one item to the preferred setting based upon the results of the determination ('392; Col. 2, lines 26-34)

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to include in the ergonomic assessment system of Wong et al. the physical adjustable parameter (i.e. desk) as taught by Dencker and the combination would have yielded predictable results.

25. With respect to Claim 19, the combined art teaches the method according to claim 18 and Dencker discloses further comprising the step of providing at least one

indicium for the at least one item to visually indicate a setting for the at least one physically adjustable parameter ('392; Col. 4, lines 21-23).

26. With respect to Claim 20, the combined art teaches the method according to claim 19, Dencker discloses wherein the at least one item comprises at least one of a seat and a table, and the at least one physically adjustable parameter comprises at least one of a seat height and a table height ('392; Col. 3, lines 19-27; Col. 4, lines 10-16; lines 57-66).

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HIEP NGUYEN whose telephone number is (571) 270-5211. The examiner can normally be reached on Monday through Friday 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/H. N./
Examiner, Art Unit 3686
April 20, 2009

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686